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# 105 Miles: The Rio Grande Compact and the Distance from Elephant Butte Reservoir to the Texas Line

 [Jeremy Brown](#)

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The Supreme Court last month granted Texas leave to file an original complaint over water in the Upper Rio Grande and move forward with its claims that New Mexico is violating the compact that governs allocations from the river.

The lawsuit highlights a curious feature of the Rio Grande Compact: it does not explicitly require New Mexico to deliver water to the Texas line. Colorado, New Mexico, and Texas – the three states that share the Rio Grande – drafted the compact in 1938 and ratified it the following year to “effecuat[e] an equitable apportionment” of “the waters of the Rio Grande” from its headwaters to Fort Quitman, Texas, about 80 miles southeast of El Paso.

(The compact does not define the term “waters,” which raises another set of issues beyond the scope of this post on the ways that compact does – or does not – contemplate the hydrological connections between surface and groundwater.)

Article III sets forth the amounts that Colorado must deliver in the Rio Grande to the Colorado-New Mexico state line each calendar year. That amount is a base of 10,000 acre-feet less certain indices that are calculated according to gauged tributary flows.

There is no equivalent provision requiring New Mexico to deliver water to the Texas-New Mexico line. Instead, the compact requires, in Article IV, that New Mexico deliver a certain amount of water to a reservoir about 105 miles north of the Texas line – Elephant Butte Reservoir, a Bureau of Reclamation facility built in the 1910s and operated as part of the [Rio Grande Project](#).



Rio Grande Basin

Since a political subdivision of Texas – El Paso County Water Improvement District No. 1 (EPCWID) – has a contract with the bureau for reservoir water, the compact indirectly ensures that Texas receives a certain amount of Rio Grande water. (EPCWID has traditionally received 43 percent of the delivers from Elephant Butte; a New Mexico political subdivision – the Elephant Butte Irrigation District (EBID) has received the other 57 percent.)

But does New Mexico have obligations to Texas beyond simply delivering the required water to Elephant Butte? Or can New Mexico allow irrigators or others to divert water from the Rio Grande downstream of Elephant Butte but before the river reaches Texas?

In its briefing, Texas argues that New Mexico has obligations that are not stated in the express terms of the compact: “In order for water to be delivered to Rio Grande Project beneficiaries in southern New Mexico and in Texas, it must be released from Rio Grande Project facilities, and allowed to flow unimpeded through Rio Grande Project lands in southern New Mexico, and then across the state line into Texas. New Mexico has, contrary to the purpose and intent of the Rio Grande Compact, allowed and authorized Rio Grande Project water intended for use in Texas to be intercepted and used in New Mexico. New Mexico’s actions, in allowing and authorizing the interception of Rio Grande Project water intended for use in Texas, violate the purpose and intent of the Rio Grande Compact, causing grave and irreparable injury to Texas.”

The U.S. Solicitor General, from whom the Supreme Court requested briefing, argues that Texas’ position is “credible” and that the interpretation that the compact requires delivery to Elephant Butte but establishes no obligations to Texas “is inconsistent with [the compact’s] basic purpose, which is to equitably apportion the water of the Rio Grande Basin – from its headwaters to Fort Quitman – among the three compacting states.”

New Mexico has not disputed diversions are occurring, but it argues that “Texas does not allege and cannot establish ... that New Mexico has violated an express Compact term. Nor has Texas alleged that New Mexico has violated its obligation under the delivery requirement that the Compact imposes, i.e., to deliver an amount of water to Elephant Butte Reservoir. There is no requirement under the Compact that New Mexico deliver a specified quantity of water to the New Mexico-Texas state line, a location about 105 downstream from Elephant Butte Dam.”

Colorado – which Texas has accused of no wrongs but which, as a signatory to the compact, has been brought into the case – sides with New Mexico, saying that Texas “fails to explain how [the Article IV] provisions apply to waters in the Rio Grande Project Area *below* Elephant Butte Dam, which appear to be the waters affected by New Mexico’s alleged actions.”

The exact obligations of New Mexico to Texas have been in some degree of doubt since the compact was negotiated. According to a 2001 University of Denver Water Law Review [article](#) from Denver lawyer [William Paddock](#), Texas faced more opposition to ratification of the compact than New Mexico or Colorado did because water users on the Lower Rio Grande Valley (LRGV) were concerned that, by using the reservoir as the delivery point, the compact did not guarantee Texas water.

The LRGV water users urged Texas’ principal compact negotiator, attorney Frank Clayton, to revise the compact to include an express guarantee, but he said that New Mexico and Colorado could not make a guarantee because the Bureau of Reclamation controlled releases from Elephant Butte. He assured, however, that Bureau of Reclamation contracts from Elephant Butte provided “that the lands within the [Rio Grande Project] have equal water rights, and the water is allocated according to the areas involved in the two States.”

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